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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th July, 1953

S.R.O. 1467.—Whereas the elections of Shri Chaturbhuj Vithaldas Jasani of Rajendra Ward Gondia, District Bhandara and Shrf Tula Ram Chandrabhan Sakhre of Goddigudam, Ward No 26, Nagpur, as members of the House of People from the Bhandara constituency of that House have been called in question by an Election Petition (Election Petition No 295 of 1952 before the Election Commissioner) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Moreshwar Parashram of Tumsar, Tahsil and District Bhandara,

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission,

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNAL, NAGPUR

Shri N H Mujumdar, B Sc LL B—*Chairman*

Shri S C Rai, M A, LL B—*Member*

Shri Abdul Razak Khan, Advocate—*Member*

ELECTION PETITION No 3 OF 1952

1 Shri Moreshwar Parashram age 48 years resident of Tumsar, Tahsil and District Bhandara—*Petitioner*

Versus

1 Shri Chaturbhuj Vithaldas Jasani, age 51 years, Rajendra Ward, Gondia, Tahsil Gondia, District Bhandara

2 Shri Chapsi Vithaldas Jasani, age 47 years, Rajendra Ward, Gondia, Tahsil Gondia District Bhandara

3 Shri Jwala Prasad, son of Vishvambarnath Dube age 45 years, Khamtalao Ward, Bhandara, Tahsil and District Bhandara

4 Shri Tularam, son of Chandrabhan Sakhre, age about 47 years, Goddigudam, Ward No 26, Nagpur

5 Shri Gangaram Mathaji Thaware age about 47 years, Ward No 39, Sadar North, Nagpur

6. Shri Sakharam Masa Meshram, Advocate, Ward No. 34, Nayabasti, Nagpur.

7. Shri Hemchandra Jagobaji Khandekar, House No. 131, Ward No. 8, Umred Road, Nagpur.

8. Shri Madhaorao Gangadharrao Chitnavis, age 60 years, Chitnavis Wada, Ward No. 10, Nagpur-2;

9. Shri Bhaskar Baliram Ninawe, age 40 years, Khatipura Ward, Bhandara, Tahsil and District Bhandara;

10. Shri Sohanlal Shambhulal, age 38 years, Bajaj Ward, Gondia, Tahsil Gondia, District Bhandara.

11. Shri Wasudeo Paikuji Meshram, age about 40 years, Ward No. 37, Mohan Nagar, Nagpur;

12. Haridas Damaji, age about 36 years, Ward No. 33, Nagpur—*Respondents*.

PRESENT:

Shri M. N. Phadke, Bar-at-Law for the the Petitioner.

Shri T. P. Naik, Advocate, for the Respondent No. 1.

Shri B. H. Chati for Respondent No. 4.

ORDER

(*Delivered this 15th day of July* 1953)

1. This petition presented by an elector, Shri Moreshwar Parashram, to the Election Commission, under section 81 of the Representation of the People Act 1951, seeks to set aside wholly, the election, in which the first respondent (Shri Chaturbhuj V. Jasani), was declared elected to fill up the general seat, and the fourth respondent (Shri Tularam C. Sakhre) was declared elected to fill up the seat reserved for the scheduled castes in the House of the People, from the Bhandara Parliamentary double member constituency.

2. The fourth respondent (Shri Tularam C. Sakhre) and the fifth respondent (Shri Gangaram M. Thaware), were amongst the candidates who claimed to belong to the Scheduled Castes and wanted to be elected to the seat reserved for a candidate of the Scheduled Castes. The caste of Mahars in Bhandara District of Madhya Pradesh is included in the Scheduled Castes. These candidates in the applications for nomination stated that they were Mahars by caste, and that therefore they were entitled to represent the Scheduled Castes. The seventh respondent (Shri Hemchandra J. Khandekar) objected to the nomination of Shri Gangaram on the ground that he had ceased to be a Mahar because he had been initiated in to the Mahanubhava Panth which recognized no caste system. The Returning Officer after an inquiry found that Shri Gangaram had become a member of Mahanubhava Panth and had, therefore, lost his caste as a Mahar. On the basis of this finding the nomination of Gangaram was rejected. Subsequently Gangaram was elected to the Council of States and then, after the presentation of this petition, he died. The seventh respondent also has died, during the pendency of this petition. The Petitioner's contention is that Gangaram's initiation as a member of the Mahanubhava Panth did not affect his caste, and he was entitled to represent the Scheduled Castes, and that his nomination was improperly rejected, and that the whole election is liable to be set aside on that ground.

3. The first respondent (Shri Chaturbhuj V. Jasani), who has been declared as elected to fill up the general seat at the election is admittedly a partner of the Firm of Messrs. Moolji Sicka & Company. The Firm is the manufacturer and seller of *bidis*. The Petitioner contends that at the time there was a subsisting contract, under which the Firm of Messrs. Moolji Sicka and Company was supplying *bidis* to the Canteen Stores Department of the Government of the Union of India, and that the first respondent (Shri Chaturbhuj V. Jasani) was disqualified under section 7(d) of the Representation of the People Act 1951, from being member of the House of the People, and his nomination was improperly accepted.

4. The respondents 1 and 4 (Shri Chaturbhuj V. Jasani and Shri Tularam C. Sakhre), who are the winning candidates in the election, are the only two contesting respondents in this trial. They plead that Mahanubhava Panth being a community of casteless people, the deceased Gangaram was not a member of the Scheduled Castes and that his nomination was rightly rejected, and that there

was no contract between the Firm of Messrs. Mooljı Sicka and Company and the Union Government for the supply of *bidis*, and that the nomination of the first respondent (Shri Chaturbhuj V. Jasani) was rightly accepted.

5. The issues framed for this trial and their findings are given below:—

Issues	*Findings*
1. (*a*) Was Gangaram, the deceased respondent born as Mahar ?	Yes.
(*b*) Does a person, born as Mahar, cease to belong to the Scheduled Castes, on being admitted to Mahanubhava Panth ? .	No.
(*c*) Was Gangaram duly recognized or confirmed as a member of Mahanubhava Panth ?	Yes.
(*d*) Was the rejection of Gangaram's nomination proper because he was to contest a seat, reserved for the Scheduled Castes ?	No.
(*e*) Should the nomination of Gangaram, if rejected for the Scheduled Caste seat have been accepted for the "remaining seat" ?	See paragraph 27.
(*f*) Whether the result of election was not affected because Gangaram has died or because he was returned as member of the Council of States ? . . .	It was affected.
2. (*a*) Was there a contract between Messrs. Mooljı Sicka & Co., on the one hand, and the Canteen (Stores) Department of the Government of India, on the other, for the supply of *bidies* at any relevant time ?	Yes.
(*b*) Was, therefore, the nomination of the respondent Chaturbhuj Jasani, liable to be rejected ?	Yes.
3. (*a*) Was the voting at the election on party lines ?	Not proved.
(*b*) Were the respondents 1, 2, 4, 5 and 10. candidates of the Congress Party ? .	Not proved.
(*c*) Were the respondent Gangaram, and the respondent No. 4 Congress candidates for the seat reserved for Scheduled Castes ?	Not proved.
(*d*) Has the improper acceptance or rejection of any nomination affected materially the result of the election ? . . .	Yes.
(*e*) Whether the result was not affected, because the voting was on party lines ?	Does not arise in view of the finding on 3 (*d*).
4. Should the election be set aside ? What other directions should be given ? .	Yes. See the order of the Tribunal

REASONS FOR THE FINDINGS

6. *Issues Nos.* 1 (*a*), (*b*) *and* (*c*).—The deceased Gangaram in his application for nomination as a candidate for election said that he wanted to contest the seat reserved for the Scheduled Castes on the ground that he belonged to the caste of Mahars which is one of the Scheduled Castes. In the objection to his nomination, the seventh respondent did not dispute that the deceased Gangaram was a Mahar by birth. The inquiry held by the Returning Officer was restricted to the point whether the deceased Gangaram was initiated to the Mahanubhava Panth, because the fact that Gangaram was born a Mahar was assumed to have been uncontested. In the present trial the respondents do not admit that Gangaram was a Mahar by birth, and thus the scope of inquiry in this trial is wider than what it was before the Returning Officer.

7. The Petitioner has examined witnesses who knew the deceased Gangaram intimately and who were related to him. Ramdas P.W. 2 is the brother of the widow of the deceased Gangaram. Ramdas says that he is a Mahar by caste and that his sister who was not a Mahanubhava at the time of her marriage, married the deceased Gangaram, who though a Mahanubhava by faith, was a Mahar being born of Mahar parents. Sadashiva P.W. 3 another Mahar has said that the first wife of the deceased Gangaram was a Mahar girl and was not a Mahanubhava, and that the deceased Gangaram was a Mahar by caste. Sitaram P.W. 4 is not a Mahar, but he supports the evidence of the other witnesses for the Petitioner. All this evidence appears to be trustworthy, and has not been rebutted by the evidence adduced by the respondents. Even in the evidence adduced by the respondents there is much which supports what the Petitioner seeks to prove.

8. Shankar R.1 W.2 has been examined by the first respondent as an authority on the Mahanubhava Panth, and the witness professes to have made a deep study of the Panth. Though he avoided answers about the non-sanyasis, he could not deny that there are non-sanyasis in the Panth, and that in marriages (amongst non-Sanyasis) caste is observed (*vide* paragraph 7 of the deposition of Shankar R. 1 W.2). Harendra Vyas (R.1 W.1) has been examined as a spiritual head of the Mahanubhavas, and as one who could speak with authority about the Mahanubhavas. In his deposition (*vide* paragraph 8) he says that Mahars are allowed to visit a particular temple, because the deceased Gangaram Thaware had visited that temple. Even Chudaman (R.1 W.3), who gave evasive replie and seemed to have come determined to establish the case that Mahanubhavas do not observe castes, had to admit that he had not known a single instance of a marriage of an issue of a Mahanubhava convert from one caste with an issue of a Mahanubhava convert from another caste. From the evidence of the witnesses examined in this trial, we infer that non-Sanyasi Mahanubhavas retain the caste in which they are born.

9. After the rejection of the nomination, the deceased Gangaram made a petition to the High Court. The petition was supported by an affidavit which was sworn by the deceased Gangaram on 30th November 1951. That affidavit is Ex. P-3, in this trial. The deceased has described himself as Mahar, born of Mahar parents. The deceased has said that he represented the Scheduled Castes and the depressed classes, because he was a Mahar. This statement of the deceased made in his affidavit, is supported by the deposition of Shri Haridas (R.1 W.5), who though a respondent is not contesting the case. Shri Haridas (R.1 W.5) has said that the deceased Gangaram was a Mahar, and that he was the representative of the Depressed Classes and the Scheduled Castes in many conferences. In 1936 the deceased Gangaram was shown as a Mahar in the electoral roll, and he contested the seat reserved for the Depressed Classes in the Bhandara District constituency. In the voters' list of the Nagpur Civil Station Sub-Committee (Ex. P. 4) also, the deceased was described as a Mahar by caste.

10 The evidence which is not rebutted and which is convincing proves that the deceased Gangaram was born in a Mahar family and considered himself a Mahar by caste, though he and his parents had been initiated into the Mahanubhava Panth (as non-sanyasis), and that he married girls who at the time of their marriage were not Mahanubhavas, but were Mahars. The evidence proves further that acceptance of Mahanubhava *Panth* as a non-sanyasi does not affect the caste of the person accepting the *panth*.

11. The parties have examined experts and have relied upon some literature about the tenets of the Mahanubhava Panth. The respondent's contention is that loss of caste is the necessary concomitant of the acceptance of the Mahanubhava Panth and that once the position that the deceased Gangaram was a Mahanubhava is admitted it must follow that he had ceased to be a Mahar. It is, therefore, necessary to refer to the literature on the subject. The early literature of the Mahanubhava Panth is in old Marathi and a book on the subject written by Shri H. N. Nene (PW 1), is on record as Ex. P-1. Before mentioning his conclusions, it will be better to refer to some other literature on the point. One article compiled from notes drawn up by a Colonel is printed in Central Provinces Ethnographic Survey Part IX page 107 and in Tribes and Castes by R. V. Russell at page 176. In that article the Mahanubhavas (spelt as Manbhao) are said to be forming a separate caste The respondents and the petitioner have relied upon those books, the former to prove that the Panth did abolish the caste system and the latter to prove that it did not.

12. In these books, *i.e.* Central Provinces Ethnographic Survey and Tribes and Castes in Central Provinces by R. V. Russell, it is stated that Mahanubhava is a religious sect or order which has now become a caste. In the Amrawati

District Gazetter (Vol. A, page 121) and the Imperial Gazetteer of India (Vol. XXI), the same view has been expressed about this sect. In Madhyaprant Marichika, by Shri Prayag Datta Shukla, a similar view has been expressed (at page 23). If this view be accepted a Mahar ceases to be a Mahar on becoming a Mahanubhava and he becomes a member of a new caste of Mahanubhavas. Mahars belong to the Scheduled Castes. Mahanubhavas are not included in the Scheduled Castes. Thus it is contended that a Mahar who becomes a Mahanubhava becomes a member of Mahanubhava caste and ceases to belong to Scheduled Castes. This view, however, is not correct as will appear from the writings of learned authors, whose opinions are based on a careful and deep study of the tenets of the Mahanubhava Panth and the customs and rituals observed by persons belonging to the Mahanubhava Panth.

13. The learned counsel for the respondents relied upon 'SHRICHAKRADHAR CHARITRA' by Professor V. B. Kolte (page 247). But what Professor Kolte says is that no serious attempt had been made to abolish castes (VARNA VYAVASTHA HI VISHAMTAMULAK AHE ANI MHANUN TI MODUN TAKALI PAHIJE ASA AKROSHTYANI KELA NAHIN). It would appear, therefore, that while the original Panth came into existence with the aim of removing the tyranny of the higher castes over the lower castes, it seems that the object aimed at was not realized in practice.

14. Dr. Ketkar in his MAHARASHTRIYA DHNYANKOSH at page 76 has ced the history of the origin and progress of the Mahanubhava Panth. The learned author on the basis of the authorities consulted by him says:

> "MAHANUBHAVA PANTHAS VEDA PRAMAN ASUN CHATURVARNYA VYAVASTHA ANI VARNASHRAM DHARMA HI MANYA AHET" (The Mahanubhava sect treat the Vedas as authority and recognizes the system of four castes and their rituals (page 76).

The learned author has also said that there are two divisions among the Mahanubhavas, one consisting of Updeshi and the other of Sanyasis (those who renounces the world). About those who did not renounce the world the learned author has said:

> "Upadeshi Varga Chaturvarnya and Jati Dharma Va Tadanurup Sanskar Palnare Ahet. Yanche Lagnadi Vyawahar Panthetar Sajatiyanshi Rotat." (The worldy Mahanubhavas observe caste system and follow the rituals according to the caste. The marry and carry on social contacts with persons belonging to their caste, though such persons be not Mahanubhavas)—See page 76, Vol. XVIII, 1926 Ed.

15. In the book entitled Mahanubhava Panth by Shri Balkrushna Mahanubhav Shastri, published by Shri Krushnaraj Dada Mahanubhava at page 296, a reference has been made to Gruhasthashrami (the house-holder Mahanubhava) and it has been said:

> "Chaturvarnya Vyavastha....Gruhasthashrami Yane Amalant Anun Apala Lokavyavar Chalvila Pahije". (A house-holder Mahanubhava must give effect to the caste system (Chaturvarnya Vyavastha) in his dealings in this world.

All the scholars who have studied the Mahanubhava literature have stated that Mahanubhavas have two divisions, (1) those who have renounced the world, i.e. Sanyasis and (2) those who have not, i.e. house-holders or non-Sayansis. At pages 364 and 365 of his book the learned author has shown that those who maintained that Mahanubhava Panth recognized no caste were in the wrong. Balkrushna Shastri who was himself a Mahanubhava has given the reasons and cited the authorities which have been given and cited by all other authorities including Dr. Ketkar the author of the Maharashtriya Dhnyankosh, in support of the conclusion that the persons following Mahanubhava sect, and not belonging t ie Sanyasi class, retain their original caste.

16. In Maharashtra Sarawat by Vinayak Lakshman Bhave 3rd Ed. at page 71. it has been said that Shri Chakradhar like some other famous Hindu reformers and preachers observed no caste distinctions. This statement is not an authority to prove that the caste distinctions were abolished. In Gangaram Thaware's book "Shri Chakradhar Va Mahanubhava" at page 76 there is a statement regarding Mahanubhava Panth; "Yethe Jati Kula Nahee", there is no caste or family here (i.e. among the Mahanubhavas); but the decennial report of the Association of

Untouchables belonging to the Mahanubhava sect, Ex. R1D2, written by Thaware himself, proves that among persons of the Mahanubhava sect there exist untouchables just as among the non-mahanubhava Hindus.

17. The Petitioner's witness (P.W. 1) Shri H. N. Nene has shown in his book Sutrapath (Ex. P1), at page 25 that there is a Pravruti Marga (the path of remaining in the world) and a Nivrutti Marga (the path of renouncing the world) for a Mahanubhava This view is supported by the views of other authors on the subject as stated above. It has been stated in the report Ex. R1D2 at page 24 that saints of Mahar or depressed classes should be respected. (Mahar Athava Dalit Vargacha Sadhuncha Adar Karane). This is an evidence of the fact that there were untouchable castes amongst the Mahanubhavas. At page 27 of the report Gruhasthashrami (house-holder) Mahanubhavas are mentioned and at page 17 Sadhus of the untouchable castes of the Mahanubhava Panth are mentioned. In a book entitled Mahanubhava Panthavaril Akshep Va Tyanche Nirasan written by Balkrushna Mahanubhav Shastri, at page 29 it has been said:

> "Mahanubhava Panth ha Chaturvarnya Palak ahe". (Mahanubhava maintains the system of 4 castes).

This Balkrushna Mahanubhava Shastri, is the author of another very learned book referred to above in para. 15.

18. The deceased Gangaram besides being a leader of the Mahars and oth Scheduled Castes, was a scholar and an author. At page 36 of his book Shrichakradhar Va Mahanubhava (Ex. R1D1), he mentions Mahanubhavas of Mahar, Mang, and Chamar castes, and says that they would not respect saints of the other castes. (Mahanubhava Panthacha Mahar Mang Chambhar Sudha Mothyat Mothya Asha Itar Santacha Paya Kenva Hi Padnar Nahi).

19 The point whether a Mahanubhava is a Hindu was in dispute in a suit to which the respondents' first witness Harendra was a party. The suit was decided finally by the Nagpur High Court on 21st August 1944 in second appeal No. 309 of 40 (Harendra *V.* Shri Rukhad). The judgment Ex. P-2 of the High Court has discussed the history and literature of the Mahanubhavas, and the conclusion which has been arrived at is that the Mahanubhava Panth is a sect of Hindu Sanatana Dharma. We respectfully agree with this view.

20. The literature of Mahanubhava Panth, referred to above, shows that the founder and the first preacher of the cult was Shri Chakradhar who flourished in the 12th Century A.D. The Panth was a revolt against the growing power of the Brahmins who were consolidating themselves under the guidance of leaders like Shri Shankaracharya after recovering from the effects of the attacks made on them by the Budhists and Jains. Though the Mahanubhavas are dissenters from Orthodox Hinduism, they have not gone out of the fold of Hinduism. Their supreme deity is the same as the Brahma, whose incarnations are Shri Krishna and Shri Dattatraya of Hindus.

21. The determination of the question of caste sometimes presents difficulties, and the tests to be applied for the determination of the caste of a person have been laid down in Subrao Hambirrao *V.* Radha Hambirrao (I.L.R. 52 Bombay 497 at page 505). The authority of this decision has been accepted in our State in Mst. Jijibai V. Zabu (30 N.L.R. 18), where it is pointed out that as regards castes the question has to be decided in the light of the tests laid down in the Bombay decision. Those tests are:

> '(I) Consciousness of the castes, (2) its customs and (3) acceptance of the consciousness by other castes.' In Jijibai *V.* Zabu these tests were applied in the determination of the question whether Marhattas were Kashtriyas. Applying these tests, it would have to be held that Mahars who had become Mahanubhavas still continue to be Mahars and, therefore, continue to belong to the Scheduled Castes.

22. This is also clear from the decennial report of the Association of Untouchables following the Mahanubhava Panth, Ex. R1D2, which has already b referred to above. It shows that the untouchables in general and the Mahars ... particular who were anxious to abolish untouchability and who, therefore, probably had become converts to this Panth, on finding that they still continue to be regarded as untouchables, started taking steps to elevate their position in society. The report shows that they were conscious of the fact that they belonged to the depressed classes, which are now called Scheduled Castes, and this consciousness had been accepted by other castes It would also show that their conversion to Mahanubhava sect did not bring about any change in the outlook of the members

of the other castes. Even Mahanubhavas of other castes, still continue to regard them as untouchables, that is belonging to the castes, which were regarded as untouchable castes, almost all of which have been included in the Scheduled Castes.

23. It was pointed out in G. Michael *Vs.* Venkateswaran (A.I.R. 1952 Mad. 474) that the caste system is a part of Hindu religion. It is not seriously disputed before us that Mahanubhavas are Hindus. The petitioner in 1952 Madras, though a Christian, claimed to be a member of a Scheduled Caste. It would appear that caste system has established such a hold over popular mind that Hindus who are converted to other religions regard themselves as continuing in the caste to which they belonged before their conversion. It is hardly possible that Hindus who merely join a new sect like Mahanubhava sect could be losing the caste consciousness, or that other people could be treating them as persons ceasing to be members of the caste in which they were born.

24. We are, therefore, of opinion that the Mahanubhava cult is a branch of Sanatan Hinduism, and that the Mahanubhavas continue to be members of the caste in which they are born, except when they become Sanyasis. Since the parents of the deceased Gangaram were Mahars, he also was a Mahar, and he continued to be a Mahar despite his embracing the cult of Mahanubhavas. Our findings are that the deceased Gangaram was born a Mahar, that a person born a Mahar does not cease to belong to Mahar caste which is one of the Scheduled Castes on being admitted to Mahanubhava Panth, and that though Gangaram was duly recognized and confirmed as member of the Mahanubhava Panth he had not become a Sanyasi and therefore continued to be a member of a Scheduled Caste (Mahar).

25. *Issues* 1 (*d*), (*e*) *and* (*f*).—The deceased Gangaram in his application for nomination as a candidate for election said that he wanted to represent the Scheduled Caste. He was a Mahar, though he was a follower of the Mahanubhava Panth, and as such he belonged to one of the Scheduled Castes and was entitled to represent them. The rejection of his nomination paper by the Returning Officer on the ground that Gangaram did not belong to one of the Scheduled Castes (that he was not a Mahar) was, therefore, quite improper.

26. Subsequent to the rejection of the nomination of Gangaram he was elected to the Council of States, but this would not affect this election petition in any way. His election to the Council of States did not repair the loss to the Mahar community which may have wanted him in the House of the People. He was undoubtedly an old leader of the Mahars and other Scheduled Castes, and it is quite possible the members of those castes, whether Congressmen or not, would have voted for him in large number. The election of the alternative candidate, Shri Tularam Sakhare, may have been a consolation to the Congress party, and to the candidate Gangaram himself his election to the Council of States may also have been a consolation: but that could not be a consolation or compensation to the Scheduled Castes if they wanted to send him as their representative to the House of the People, nor would the death of Gangaram affect the election petition in any way for we have to consider the position created by the rejection of his nomination paper at the time of the nomination. If the rejection of his nomination was improper, his subsequent death would not make any difference; for all that has to be determined in a case in which an election is challenged on the ground of improper acceptance or rejection of nomination of a candidate is whether such improper acceptance or rejection of the nomination has materially affected the result of the election.

27 The death of Gangaram was subsequent to the Election and, therefore, cannot affect the rights of the parties in this case in any way. The matter has to be determined in the light of the circumstances and position as existing at the date of nomination. If it is held that Gangaram's nomination had been improperly rejected and it has materially affected the result of the election, the election shall have to be declared wholly void inspite of the fact that Gangaram was subsequently returned as a member of the Council of States or inspite of the fact that he died subsequent to the election. Similarly, Gangaram, who considered himself entitled to represent the Scheduled Castes, could not be compelled to contest the election as a Non-Scheduled Castes candidate, or, the election to what might be called a general, or a Non-Scheduled Caste seat. If, therefore, Gangaram be held not to have belonged to the Scheduled Castes, the rejection of his nomination paper would be proper; but if he is held to have belonged to the Scheduled Caste, and we have held that he did belong to one of the Scheduled Castes, the rejection of his nomination would have to be held improper.

28. *Issue No. 2.*—It has been pleaded by the Petitioner that the Respondent No. 1 was disqualified to be chosen to fill a seat in the House of the People, because at all material times, *i.e.*, before, at the time of the nomination and until the result of the elections was declared, he had a share or interest in a contract for the supply of goods to appropriate Government, *i.e.*, the Central Government, and that his nomination had, therefore, been improperly accepted; that the result of the election had been materially affected thereby and that the election was, therefore, liable to be declared wholly void. On behalf of the Respondent No. 1, it was denied that he had any share or interest in any contract for the supply of goods to the Central Government and was, therefore, disqualified for being chosen as a member of the House of the People. It was admitted on behalf of the Respondent 1, that Respondent No. 1 is a partner of Messrs Moolji Sicka & Co., who are *bidi* manufacturers. But it was contended by the Respondent No. 1 that there was no subsisting contract for the supply of *bidis* within the meaning of section 7(d) of the Representation of the People Act, between the partnership Firm of Messrs Moolji Sicka & Company and the Canteen Stores Department of the Central Government at the time of the nomination or election, or at any other relevant time. It was admitted that the Canteen Stores Department is a department of the Central Government. It was denied that the partnership Firm of Messrs Moolji Sicka & Company had at any relevant time supplied *bidis* to the Central Government in pursuance of a contract.

29. It was argued on behalf of the Respondents that there was no contract between the Firm of Moolji Sicka & Company and the Central Government. It was alleged that if any purchases were made by any department of the Central Government from Messrs Moolji Sicka & Company, they were transactions similar to purchases made from markets and did not amount to contracts as contemplated under section 7(d) of the Representation of the People Act. It is also contended that even assuming that the transactions between Messrs. Moolji Sicka & Company and the Canteen Stores Department amounted to a contract, the contract was null and void and unenforceable, as only such contracts as satisfy the conditions laid down in Article 299 of the Constitution of India are valid and enforceable contracts. It was urged by Shri Naik that the Petitioner had failed to prove that the correspondence between Messrs. Moolji Sicka & Company and the Canteen Stores Department amounted to a contract and that the person who wrote the letters on behalf of the Central Government had an authority to write them. It was urged that in the absence of a formal document expressed to have been made by the President in the exercise of the executive power of the Union and executed by a person authorized in that behalf by the President, it should be held that there was no contract between Messrs. Mooji Sicka & Company and the Union *i.e.* the Central Government.

30. The Petitioner examined on commission in Bombay Shri Nauroz Rustumji Kallyanwala, the present Chairman of the Canteen Stores Department of the Union Government. In the year 1951, the Chairman was one Shri Gurbaksh Singh who wrote letters to and received letters from the Firm of Messrs Moolji Sicka & Company. The first respondent has not produced the original of letters received by the Firm from the Chairman, but the letters received by the Chairman from the Firm were produced in original by the witness before the Commissioner and their copies are on record as Exs. A and B.

31. The correspondence shows that before July 1951, Messrs Moolji Sicka & Company used to supply *bidis* to the Canteen Contractors on receiving orders directly from them. This system was described as the direct supply system. But the Chairman of the Canteen Stores Department wanted to change the system to what was known as "on consignment account". The terms and conditions of the revised arrangement were discussed between the Firm of the first respondent and the Chairman on 10th July 1951, and were reproduced in the letter dated 11th July 1951 (Letter No. 4 of Ex. A) sent by the Firm to the Chairman. The letter is of great significance. In a subsequent letter dated 16th July 1951, the Firm again referred to the said terms, and made some suggestions about minor details. The Chairman in his letter dated 19th July 1951 (Letter No. 5 of Ex. A) accepted the terms.

32. The Firm of the first respondent was to receive orders for *bidis* from the Chairman Canteen Stores Department, and not from the Canteen Contractors. The *bidis* supplied by the Firm to the Chairman were to be in his custody, and he was to sell them to his Canteen Contractors, who were prohibited from making purchases directly from the Firm of the first respondent. The payment for the goods supplied by the Firm of the first respondent, was only to be made after the Chairman was able to sell them to the Canteen Contractors. Should the Chairman

be not able to sell the *bidis* to the Canteen Contractors within six months of the date of their manufacture, the Firm was to take back such goods from the Chairman to replace them by fresh stock. It is to be noted that for the purpose of determining the time of their manufacture the *bidis* were to bear code marks See the letter dated 19th July 1951 from the Chairman of the Board of Administration, letter No. 5 of Ex. A, and the letter dated 26th July 1951, letter No. 6 of Ex. A). After this correspondence orders were actually given to the Firm and accepted by them and *bidis* were supplied in pursuance of the orders. The orders were given by the Chairman of the Canteen Stores Department only, and no orders were given by the Canteen Contractors to the Firm. The extract of accounts clearly shows that in pursuance of the terms of the contract settled by correspondence (Exs. A and B) orders were received by Messrs Moolji Sicka & Company from 20th July 1951 to 10th March 1952 and goods were supplied and payments were also received by the Company from 31st May 1951 to 31st March 1952.

33. For orders for the supply of *bidis* received by the Company from 8th October 1951 to 21st October 1951 the payment was made on 19th December, 1951. Evidently, the *bidis* were supplied somewhere between 8th October 1951 and 19th December 1951. Similarly, for orders received on 9th August 1951 and 8th October 1951 for the supply of goods payments were received by the Company on 24th December 1951. Ex. C also shows that orders received on 14th November 1951, 17th October 1951 and 12th November 1951 were executed sometime between 14th November 1951 and 22nd January 1952, and the payments in respect of goods applied on orders dated 17th October 1951, 12th November 1951 and 14th November 1951 were made on 5th January 1952 and 22nd January 1952. This document also shows that orders were subsequently also received by the Company, which, in pursuance of the orders, supplied goods and went on receiving payments right upto 31st March 1952. It would appear from this document that before and at the time of the nomination, and even after the result of the election had been announced, orders were received by the Firm of Moolji Sicka & Company of which the Respondent No. 1 was a partner and goods were supplied and payments received by the Company. It is to be noted that orders were received and goods were supplied in pursuance of the agreement evidenced by the letters 1 to 8 marked as Ex. A.

34. It would thus clearly appear that there was a contract for the supply of *bidis* between Messrs. Moolji Sicka & Company and the Canteen Stores Department of the Government of India. It was, however, argued by the learned counsel for the Respondent No. 1 that there was no contract as such as the quantity to be supplied had not been specified, nor had any rate been fixed. About the rate, we find in the letters a mention that the price had to be paid according to the market rate subject, of course, to the condition relating to the discount. The rate had thus been fixed, and all that was to be estated was the quantity to be supplied by the Firm. Such a contract has been called "implied contract" in Shri N. G. Narsimha Gowda *V.* Shri K. Lakkappa and another (Election Petition No. 67 of 1952), decided on 24th February 1953 by the Election Tribunal at Bangalore and published in the *Gazette of India Extraordinary* on Thursday, March 26, 1953).

35. Our attention was drawn by the Respondent No. 1's counsel to section 2 of the Indian Contract Act where 'contract' has been defined as an agreement enforceable by law, and it was argued that as the agreement between the Canteen Stores Department and the Firm of Messrs Moolji Sicka had not been expressed to have been entered into on behalf of the President, and as there was no formal document executed by proper authority, it was not such a contract as could bring into operation Section 7(d) of the Representation of the People Act and disqualify the Respondent No. 1.

36. The learned counsel for the Respondent No. 1 argued that the clause relating to disqualification must be strictly construed and that if the contract alleged or proved by the Petitioner was not an agreement enforceable by law, the person entering into such an agreement could not be hit by Section 7(d) of the Representation of the People Act. According to the learned counsel for the Respondent No. 1, the word 'contract' in Section 7(d) meant a formal contract expressly entered in writing and executed by a proper authority on behalf of the President. If there is no such contract enforceable at law, according to the learned counsel, there is no contract at all. His contention is that the contract should have been between the Central Government (*i.e.*, expressed to have been entered into an behalf of the President) and the Firm of Messrs Moolji Sicka & Company.

Clause (d) of Section 7 only says "contract for the supply of goods to the appropriate Government", but does not specify "with whom". The respondent's contention is not borne out by the language of Section 7(d) of the Representation of the People Act 1951 which nowhere says that the contract must be with the Government. All that the section says is that the contract must be for the supply of goods to the appropriate Government.

37. It would appear from the language of Section 7(d) that if any person has any interest or share in a contract for the supply of goods to the appropriate Government (in this case the Central Government) such a person would be disqualified even where the contract is not with the Government. The decision in Hanuman Prasad Misra V. Tarachand (Election Petition No. 272 of 1952 decided by the Election Tribunal at Faizabad on 6th April 1953—published in the *Gazette of India Extraordinary*, dated Tuesday, April 21, 1953) in our opinion lays down the correct law.

38. The question of enforceability of the Contract, by the Government or by the Firm does not arise for consideration in this case. Our attention has been drawn to Deviprasad Srikrishna Prasad and another V Secretary of State for India (I.L.R. 1941 All. 741) and the Province of Bengal V S. L. Puri (51 Calcutta Weekly Notes. 753). These cases were concerned with civil action and the question whether the unenforceability of the contract should or should not bring about the disqualification for the purpose of election did not arise in these cases. In 51 Calcutta Weekly Notes 753. their Lordships of the Calcutta High Court did not view with favour, even for purposes of a civil action, the technical grounds on which the petition was sought to be justified. It was a petition by the Province of Bengal under Section 33 of the Arbitration Act, and the validity of the agreement was disputed on the ground that the contract had not been made by the Governor of the Province. The relevant observations are:—

> "It is not surprising that the learned Advocate-General in no way sought to defend or justify this technical point being taken. Nevertheless, if it is a sound point, the Provincial Government are entitled to avail themselves of it in order to avoid their liability. Whatever one may think of the propriety or morality of their conduct, that does not arise in this Court." (at page 754).

In the penultimate paragraph of the judgment, it has been said:—

> "I regret having to come to the conclusion to which I am forced and that is to hold that this petition must prevail and the relief sought must be accorded."

39 It was argued that the elementary principle of construction was 'to intend the legislature to have meant they had actually expressed'. In view of this rule we have been asked to construe the language of Section 7(d) literally. As the word 'contract' has not been defined in the Representation of the People Act 1951 we have been asked to assign to the word the same meaning as is given to it in Section 2 of the Indian Contract Act. In this connection, the following passages in Maxwell on Interpretation of Statutes are significant:—

> 'A court is not at liberty to put a limitation on general words which is not called for by the sense, or the objects, or the mischiefs of the enactment, and no construction is admissible which would sanction a fraudulent evasion of an Act." (9th Ed., page 268).

> "The rule of strict construction, however, when invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the Legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent, and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are, indeed, frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words, to suppress the mischief and advance the remedy." (9th Ed. page 279).

40. The learned author at page 288 has further pointed out that "the tendency of modern decisions upon the whole, is to narrow materially the difference between

what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the Legislature, than formerly."

41. It appears to us that the word 'contract' used in Section 7(d) cannot be interpreted to mean contract to which Government is a party. Nor can it be subjected to the further restriction that it means a contract in writing expressed to have been entered into on behalf of the President and executed by some person authorised by the President to execute it on his behalf. It appears to us from the context in which the word has been used and from the intention of the Legislature in enacting the provision of Section 7(d), that the word 'contract' shall have to be given its ordinary meaning. This point was elaborately discussed in Election Petition No. 118 of 52 decided on 11th February 1953, by the Election Tribunal, Cuttack [Reported in the Gazette of India (Extraordinary), dated February 24, 1953]. That Tribunal held that the word 'contract' is used in a comprehensive and popular sense and is meant to embrace all cases where a person agreed to supply goods to Government.

42. That the enjoyment of benefit or interest in a contract, though not in a legal form, or legally enforceable, entails disqualification, has been held in two English Cases, (1) R. *Vs.* Francis (21 L.J.Q.B. 304) and (2) Leominster Case (Rog. 429). The observations in R. *Vs.* Francis throw a flood of light on the principle underlying the provisions similar to Section 7(d) of the Representation of the People Act. Lord Campbell C. J. in that case observed

> "This rule must be made absolute. I am quite clear that this is a 'contract or employment' within Section 28 of the 5 and 6 Will 4c. 76. It is a dealing with the council for profit, and we cannot look to see whether the contract is binding so as to support an action at law against the council. It would be monstrous to hold that the disqualification does not attach, because the corporation cannot be compelled to perform the contract."

Commenting on the Leominister Case, the observations in Rogers on Election, are:—

> "Parliamentary committees formerly made a distinction between the cases where the disqualification was clear and those where it was doutful, but the existence of a doubt as to the disqualification will not prevent the votes being thrown away.....Thus in Leominister (1827) (Rogers, 10th ed., App. p. 1) notice was generally given at the time of election that B was disqualified by reason of being a lottery contractor. On the other hand, a counter-notice was circulated containing the opinions of two barristers that he was not disqualified. It was held that the votes given to B were thrown away, and that the candidate next on the poll was duly elected." (Page 85, Rogers on Elections, Vol. III).

43. That even an indirect interest in a contract disqualifies a member is clear from Nutton *Vs.* Wilson (22 Q.B.D. 744):—

> "Where persons under a contract with a local board to do certain work employed the defendant, a member of the board, to do joinery work in connection with such contract, amounting to about 6 Lbs., he was held liable to penalities (disqualifications) and Lindley, L. J., said that the object was to prevent the conflict between interest and duty that might otherwise inevitably arise." (Rogers on Election, Vol III, page 20).

44. The observations of Costello J. in Satyendrakumar Das *V.* The Chairman of the Municipal Commissioners of Dacca (I L.R. 58 Calcutta 180) as regards the object of enacting provisions similar to Section 7(d) and his exposition as to how such provisions of law are to be interpreted can be taken for guidance in the interpretation of the provisions of Section 7(d) of the Representation of the People Act, 1951:—

> "It needs scarcely to be said that the object of the Section both in the English Act and in the India Act is to provide for the purity of public life and to prevent corruption or anything which produces a situation in which the private interest of a councillor or commissioner conflicts with or is likely to conflict with or run counter to his duty as public man. The object of these sections was well expressed, if I may say so, by Lindley L.J. in Nutton *V.* Wilson (1889) (22Q|B.D. 744,

748) where he said, with reference to the words used in the Public Health Act, 1875,

'To interpret words of this kind, which have no very definite meaning, and which perhaps were purposely employed for that very reason, we must look at the object to be attained. The object obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise.'

'Although Lindley L. J. made the observation with reference to the provisions of the Public Health Act, it is fully applicable with just as much force to the provisions of Section 57 of the Act with which we are now concerned. Although that is the purpose and object of the provisions of this kind; it is, I think, right that the courts should bear in mind that they are penal provisions and, therefore, ought not to be extended beyond their legitimate limit; but at the same time, if there is any doubt, the courts should be careful to see that the intention of the legislature in enacting the section is duly observed. In some of the older cases the judges in England, with regard to matters of this kind, have been disposed to hold that the smallest variation of the provision is sufficient to disqualify a guilty person, though in other cases the suggestion was thrown out that the maxim de minimis non curat lex might apply. I think the former view is preferable.' " (Pages 189 and 190). (The underlining view is

45. After referring to cases in which even a very small breach of the statute was held to inflict disqualification, the learned Judge has expressed his own opinion in the following words:—

"I give it as my own opinion that in matters of this kind the court ought to be disposed to view with great disfavour any infraction whatever or any breach of the provisions of the disqualification sections." (p. 190).

46. A distinction seems to have been drawn between cases of executory contract and executed contract, and in the case of Royse V. Birley (1869) (L.R. 4 C.P. 296), it was held that where the contract had been completely executed and all that remained to be done was to receive payment from Government the disqualification was removed. It was held that the contract had been completely executed and Government was placed in the position of a debtor of the person to whom they owed money for the contract performed by him. The person who had thus executed the contract, and had merely to receive payment was held not disqualified. But this view was not accepted by the Irish Court of Appeal in O'Carroll V. Hastings, (1905) (2Ir. R. 590). It was held that the respondent who had contracted with an Urban District Council to do the printing for an election on January 16, 1905, and was himself elected and on January, 18, printed the result of the election, and on January 23 attended the meeting of the Council, acted and was paid the price for the printing, was concerned in the contract with the Council at the time he acted. It was thus held that a person's interest in a contract executed by him only determines when he is paid for it or possibly when a chance of a dispute arising as to the amount due has been determined by a judgment or arbitrator's award.

47. The distinction between executory and executed contracts need not be considered by us as in this case contracts for the supply of goods were in the process of execution and had not been fully executed, either at the time of nomination or at the time of the declaration of the result of the elections. Some of the contracts, therefore, were executory contracts. This is, therefore, not a case in which the principles on which Royse V. Birley (1869) (L.R. 4 C.P. 296) and Cox V. *Truscott* (1905) (92 L.T. 650) were decided would be applicable. However, we have already stated above that the correctness of these decisions was doubted in O'Carroll V. Hastings supra.

48. In view of the rules of interpretation discussed above we hold that the word contract has been used in a comprehensive and popular sense in Section 7(d) of the Representation of the People Act and not in the restricted sense of a contract in writing complying with the provisions of Article 299 of the Constitution. Indeed, the word 'contract' could not have been used to mean only contracts in writing made in the name of the President and executed by some one authorised on his behalf to execute them, because there is nothing in the section to show that the word is only used to indicate "contract with appropriate Government". In fact, the word 'contract' there is not used to indicate necessarily contracts with Government and can mean contracts with any other person. A contrary view

seems to have been expressed in Hoven Jones V. Mohan Singh and two others (Election Petition No. 28 of 1952 published in the *Gazette of India Extraordinary*, dated December 11, 1952, p. 939 at p. 946), but with that view (and we say this with great respect) we disagree.

49. Our conclusions, therefore, are that the Respondent No. 1 had a share or interest in the contract for the supply of goods to the Central Government and he was under Section 7(d) of the Representation of the People Act disqualified for being chosen a member of either House of Parliament. His nomination paper was, therefore, improperly accepted.

50. *Issue No. 3(d).*—It was argued by the learned counsel for the Respondent No. 1 that even if we came to the conclusion that the decision of the Returning Officer rejecting the late Gangaram Thaware's nomination was not correct, we would not be justified in holding that his decision rejecting Gangaram Thaware's nomination was improper. It was contended that on the material that was placed before him the decision of the Returning Officer rejecting the nomination of Gangaram Thaware was proper. It was, therefore, contended that though we came to the conclusion on the material placed before us that the late Gangaram Thaware was a Mahar and, therefore, belonged to one of the Scheduled Castes, we will have to hold that this is not a case of improper rejection of a nomination but of non-compliance with the provisions of the Constitution or Representation of the People Act or of any rules or orders made under the said Act or of any other Act or rules relating to elections. It was contended that the case would fall under clause (c) of sub-section (2) of Section 100 and not clause (c) of sub-section (1) of Section 100 of the Representation of the People Act. It was also contended that the nomination of the Respondent No. 1 could not also be said to have been improperly accepted by the Returning Officer and all that could be said was that there was non-compliance by the Respondent No. 1 with the provisions of the Representation of the People Act and this case, therefore, so far as Respondent No. 1 was concerned, would fall under clause (c), sub-section (2) of Section 100.

51. It was contended that the decision of the Returning Officer accepting Respondent No. 1's and rejecting Gangaram Thaware's nominations could not be regarded as improper if on the material placed before him his decision was correct. The learned counsel also argued that merely because on the same material the Tribunal would find it possible to come to an opposite conclusion it cannot be said that the decision of the Returning Officer was improper. According to the learned counsel, therefore, this case does not attract the operation of clause (c) of sub-section (1) of Section 100 even if we hold that Gangaram Thaware had a right to be nominated and the Respondent No. 1 was disqualified to be a member of Parliament.

52. Shri Naik on behalf of the Respondent No. 1 drew our attention to Ram Murti V. Dumba, reported in the *Gazette of India* (Extraordinary), December 30, 1952 at page 1087 and Shri Premnath *Vs.* Ramkishan and others, decided by the Election Tribunal, Jullundar and reported in the *Gazette of India* (Extraordinary) at page 1017, dated December 19, 1952, and it was urged that according to the view taken in those cases, this case would fall under Section 100(2)(c).

53. The relevant observations in Premnath V. Ramkishan, to which our attention was drawn are:—

> "It seems to us that the Tribunal would be entitled to interfere with the orders of the Returning Officer only when a perversity or some violation of the principles of natural justice is to be discerned in the impugned order of the Returning Officer."

It was argued that there was no such perversity in the order of the Returning Officer rejecting Gangaram Thaware's nomination or accepting Respondent No. 1's nomination.

54. We do not agree that the decision of the Returning Officer can be regarded as proper if it is not right, even though there may be justification for giving such wrong decision. Thus, for instance, where sufficient material has not been placed before the Returning Officer he might come to a wrong conclusion. His decision, under the circumstances, could not be considered as correct. It is possible, the Returning Officer may find intricate questions of law involved in a case and may come to wrong conclusions on such intricate question of law. It cannot be said in such cases that his decision accepting or rejecting nomination is proper merely because the material placed before him was not sufficient.

55. The dictionary meaning of the word 'improper' is 'inaccurate, wrong, unseemly, indecent'. In the context in which the word is used in Section 100(1)(c) the proper meaning would appear to be 'inaccurate' or 'wrong'. In our opinion the decision of the Returning Officer accepting the nomination of the Respondent No. 1 and rejecting the nomination of Gangaram Thaware was manifestly wrong. We might even say that it was perverse and, therefore, rejection of Gangaram Thaware's nomination and the acceptance of the Respondent No. 1's nomination were improper. Even assuming that it was not manifestly wrong or perverse, we are not prepared to hold that the acceptance of the nomination of the Respondent No. 1 who, as has been held by us above, was disqualified under Section 7(d) of the Representation of the People Act 1951, was right, or that the rejection of the nomination of Gangaram Thaware was right. According to us his decision accepting the Respondent No. 1's nomination was wrong and, therefore, we hold that the Respondent No. 1's nomination was improperly accepted. We also hold that Gangaram Thaware's nomination was improperly rejected Whether a certain decision is right or wrong would not depend upon how the officer giving that decision considers it to be; a wrong decision (*i.e.* improper decision) does not become a right decision merely because the person giving that decision does not consider it to be wrong or had not enough material to give the right decision. In our opinion, therefore, this is a case in which there was improper acceptance of the Respondent No. 1's nomination and improper rejection of Gangaram Thaware's nomination. Section 100(1)(c) would apply to this case.

56. The applicability of section 100(1) (c) and section 100(2) (c) of the Representation of the People Act, 1951 was considered in *C. K. RAMCHANDRA NAIR Vs. SHRI RAMCHANDRA DAS and 14 others* (decided by the Election Tribunal of Quilon published in the *Gazette of India* (Extraordinary) of November 11, 1952 page 2396(e). It was observed by the learned Members of the Tribunal, while rejecting the argument that the ground of improper rejection and acceptance of the nomination paper specifically treated under section 100(1) (c) may also be deemed to fall within the scope of the ground in section 100(2) (c):—

> "It is, however, difficult to accept this contention, and on the same parity of reasoning, it must follow, that the grounds of clauses (a) and (b) of sub-section (1) of section 100, are also covered respectively, by clauses (a) and (b) of sub-section (2) of section 100. If this reasoning is to prevail it would lead to the anomaly already indicated, that two reliefs can always follow from the grounds in sub-section (1) of Section 100 It fails to take into account, the mandate of the Tribunal, that on the grounds in Section 100(1) the stated relief shall follow, which necessarily excludes all others. The better view seems to be, that the grounds in clauses (a), (b) and (c) of Section 100(1), and at any rate, the particular ground in clause (c), have been dissociated from their genus for separate treatment under Section 100(1) leaving the residue alone, to be dealt with under sub-section (2), of Section 100."

57. It was next argued on behalf of the Respondent No. 1 that even if there was improper acceptance of the Respondent No. 1's nomination, or improper rejection of Gangaram Thaware's, the Petitioner could not succeed unless he had shown that such improper acceptance or rejection had affected the result of the election. There can be little doubt that if the acceptance of Respondent No. 1's nomination is held to be improper the result of the election has been materially affected, because a disqualified candidate (*i.e.* the Respondent No. 1) has been returned to the Parliament. We have, therefore, no doubt that the improper acceptance of the Respondent No. 1's nomination has materially affected the result of the election and this Tribunal is bound to declare the election wholly void under section 100(1) (c). We shall now proceed to consider whether the result of the election can be said to have been materially affected by the improper rejection of the nomination of late Gangaram Thaware.

58. In the case of an improper rejection of a nomination also, the burden of proof of the fact that the election has been materially affected lies on the Petitioner. It was realized by the Tribunals, who had to administer the law placi the burden of proof on the Petitioner, that it was impossible to obtain evidence discharge this burden. The evidence which could possibly be adduced would be in the nature of speculatory or conjectural evidence. The difficulty was, therefore, got over by introducing the fiction of a presumption, that in such cases (*i.e.* of improper rejection) the result of the election is materially affected. It was realized by the Tribunals that it was impossible for any person to prove, as a fact, that the result of an election had been materially affected in such a case. The presumption was supported on the argument that the whole electorate was deprived

of its right to vote for the candidate whose nomination had been rejected. Thus we find that in a very large number of decisions it has been held that there is a presumption in the case of improper rejection of a nomination that the result of the election is materially affected. Acting on this presumption in cases of improper rejection of nominations, elections have been held void in several cases. With those decisions we respectfully agree and we hold that the rejection of the nomination of late Gangaram Thaware has materially affected the result of the election in this case.

59. *Issues Nos.* 3(*a*), (b) *and* (c) *and* (*e*).—There is no evidence on issues 3(a), (b) and (c), which we therefore hold have not been proved. Under the circumstances issue No. 3(e) does not arise.

60. Even if our finding were that the Respondent No. 1 was not disqualified under section 7(d) but Gangaram Thaware's nomination had been improperly rejected, we would have to declare the whole election void and not simply the election to the reserved seat. The following decisions lend support to this view:

1. Election Petition No. 104 of 1952, Niranjansingh *Vs.* Brijbhansingh before the Election Tribunal, Patiala.

2. Election Petition No. 3 of Surajbhan *Vs.* Hemchand before the Election Tribunal, Delhi.

3. Election Petition No. 33 of 1952, C. K. Ramchandram Nair *Vs.* Ramchandra Das before the Election Tribunal, Quilon.

4. Election Petition No. 1 of 1952, Vijaya Mohan Reddy *Vs.* Paga Pulla Reddy before the Election Tribunal Secunderabad.

5. Election Petition No. 19 of 1952, Nagi Bhai *Vs.* Mithabhai before the Election Tribunal, Baroda, Bombay.

6. Election Petition No. 4 of 1952, Jagannath *Vs.* Achwal Pandurang and others before the Election Tribunal Jabalpur, to which one of us was a party.

7. Shri Hanuman Prasad Misra *Vs.* Sri Tara Chand and others, Election Petition No. 272 of 1952, before the Election Tribunal at Faizabad.

61. *Issue No.* 4.—But the point whether in this the election of only one or both members should be set aside would not present difficulty, because we have held improper, not simply the rejection of the late Gangaram Thaware's nomination but also the acceptance of the Respondent No. 1's nomination.

62. In view of our findings recorded above we declare the election to the House of the People from the Bhandara Parliamentary double member Constituency to be wholly void. Our order will have thus the effect of not simply setting aside the election of Respondent No. 1 but also the election of Respondent No. 4 (Shri Tularam s/o Chandrabhan Sakhre).

The 15th July, 1953.

(Sd.) N. H. MUJUMDAR, *Chairman.*
(Sd.) A. RAZAK, *Member.*
(Sd.) S. C. RAI, *Member.*

ORDER OF THE TRIBUNAL

We declare the election to the House of the People from the Bhandara Parliamentary double member Constituency to be wholly void. Our order will have the effect of not simply setting aside the election of the Respondent No. 1 but also the election of the Respondent No. 4. The costs of the Petitioner shall be paid by the Respondents Nos. 1 and 4 and the Respondents shall bear their own costs. Counsel's fee will be Rs. 500.

The 15th July, 1953.

(Sd.) N. H. MUJUMDAR, *Chairman.*
(Sd.) A. RAZAK, *Member.*
(Sd.) S. C. RAI, *Member.*

SCHEDULE OF COSTS INCURRED

Petitioner	Amount	Respondent No. 1	Amount	Respdt. No. 4	Respdt. No. 6	Respdt. No. 12	Respdts. 2, 3, 5, 7, 8 to 21
	Rs. A. P.		Rs. A. P.	Rs.	Rs.	Rs.	
1. Stamp for Election Petition.	0 0 0	Stamp for Power.	1 0 0	1	1	1	
2. Publication charges of Election Petition.	114 8 0	Stamp for exhibits.	...	...	...	...	
3. Stamp for Power	1 0 0	Stamp for Service of Processes	14 4 0	...	...	...	
4. Stamp of Exhibits.	11 12 0	...	...	...	...	...	
5. Pleader's fee (Not certified).	..	Subsistence of Witnesses.	63 10 0	...	...	...	
6. Service of Processes.	11 4 0	...	..	...	...	...	
7. Subsistence of witnesses.	53 10 0	Pleader's fee (Certified).	500 0 0	...	*	*	*
8. Applications and affidavits.	4 0 0	Misc. Applications and affidavits.	0 0 0	...	...	...	
9 Expenses for Commission.	40 0 0	...	...	. .	...	...	
10. Misc. Expenses	...	Misc. Expenses.	0 0 0	..	...	...	
TOTAL .	236 2 0		578 14 0	1	1	1	*Nil.*

* Not certified.

(Sd.) N. H. MUJUMDAR, *Chairman.*

(Sd.) A. RAZAK, *Member.*

(Sd.) S. C. RAI, *Member.*

[No. 19/295/52-Elec. III/12405.]

By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.

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